

BEFORE THE IDAHO STATE DEPARTMENT OF EDUCATION
(Administrative Hearing)

IN THE MATTER OF THE)
DUE PROCESS HEARING REQUEST)
)
█ by and through █ parent and legal)
Guardian, █)
)
Student, Petitioner)
v.)
)
Bonneville Joint School District)
NO. 93,)
School District, Respondent.)
_____)

No: H-23-11-06a

Order re: Respondent's
Motion to Dismiss and/or
Summary Judgment

INTRODUCTION

This is an administrative proceeding under the Individuals with Disabilities in Education Act (IDEA). The Petitioner is the parent (Petitioner) of a █ grade (Student) at █ in the District (Respondent). On November 6, 2023, Petitioner filed a Due Process Hearing Request requesting the relief that the Respondent evaluate the Student for eligibility for special education under the Individuals with Disabilities Education Act (IDEA.)

On November 14, 2023, this Hearing Officer reached out to the parties to receive an update regarding the mandatory resolution session. Respondent made unsuccessful attempts to reach Petitioner by phone on November 8, 9, and 14th. On November 14, 2023, Petitioner filed a request for facilitation with the Idaho State Department of Education's Officer of Dispute Resolution. On November 17, 2023, Petitioner and Respondent discussed Petitioner's concerns, and Petitioner signed a consent for assessment for special education services under IDEA.

To satisfy the IDEA's mandatory resolution session, a facilitation was scheduled for November 20, 2023, but Petitioner failed to attend. The meeting was adjourned after 20 minutes of waiting. On November 21, 2023, Respondent informed the Hearing Officer of Petitioner's failure to appear for the scheduled facilitated meeting. On November 27, 2023, Respondent updated the Hearing Officer on the attempts at a resolution session. Petitioner failed to respond to any of the Hearing Officer's inquiry. On November 29, 2023, another resolution session was scheduled for December 1, 2023, which was subsequently cancelled by Petitioner and advocate. On December 1, 2023, another resolution was scheduled for December 5, 2023. On December 4, 2023, Respondent filed a Motion to Extend Time as the hearing date was approaching and the parties had not complied with the mandatory resolution session. Petitioner did not object, and the motion was granted on December 21, 2023. A resolution session occurred on December 5, 2023, and this Hearing Officer was notified that the matter had been successfully resolved.

On December 11, 2023, [REDACTED] met with Petitioner and Respondent, objected to language in the settlement agreement, which the Petitioner did not sign. On December 12, 2023, Petitioner requested mediation. The following day, Respondent submitted a mediation request to the Office of Dispute Resolution.

As of today, January 18, 2024, the mediation has not occurred.

This Hearing Officer has made multiple attempts to schedule a prehearing conference, and repeatedly requested updates from the parties regarding the status of settlement negotiations. Most of those requests were met with Petitioner's silence, although Respondent responded. [REDACTED]

The Administrative Record is identified in the Transmittal of the Record. This Memorandum Decision constitutes the Hearing Officer's Conclusion of Law and Decision.

PREHEARING MOTIONS

Pending is Respondent's Motion to Dismiss or in the alternative Motion for Summary Judgment. Having carefully considered the record, the Hearing Officer enters the following Memorandum Decision and Order.

LEGAL STANDARD

The IDEA does not provide an administrative framework for prehearing practice, deferring to state administrative practice and procedure. The Idaho State Board of Education has adopted rules which address the IDEA Due Process Hearing procedures:

Due process hearings shall be conducted pursuant to IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General," Individuals with Disabilities Act (IDEA) requirements, and the Idaho Special Education Manual. In case of conflict between IDAPA 04.11.01, and IDEA, the IDEA shall supersede the IDAPA 04.11.01, and the IDAPA 04.11.01 shall supersede the Idaho Special Education Manual.

The Idaho Administrative Procedure Act permits dispositive prehearing motions including a Motion to Dismiss and Motion for Summary Judgment. IDAPA 04.11.01.304, IDAPA 04.11.01.510, and IDAPA 04.11.01.565. There is no conflict with the IDEA, the Idaho State Board of Education's rules, or the 2018 Idaho Special Education Manual.

The standard for determining a Motion to Dismiss in an administrative proceeding is identical to that set forth in the Idaho Rules of Civil Procedure (I.R.C.P.) 12(b)(6) which allows for dismissal when there is a "failure to state a claim upon which relief can be granted." A Motion to Dismiss is granted if the complaint fails to allege "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007.) "A claim has facial plausibility when the plaintiff pleads

factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. The plausibility standards is not akin to a ‘probability requirement,’ but it asks for more than a sheer possibility that a defendant has acted unlawfully.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009.) The Court “must take all of the factual allegations in the complaint as true,” but it is “not bound to accept as true a legal conclusion couched as a factual allegation.” *Id.* at 678; *see also* *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008.) Therefore, “conclusory allegations of law and unwarranted inferences are insufficient to defeat a motion to dismiss for failure to state a claim.” *Caviness v. Horizon Comm. Learning Ctr., Inc.*, 590 F.3d 806, 812 (9th Cir. 2010) (citation omitted).

The standard for determining a Motion for Summary Judgment pursuant to Idaho Rule of Civil Procedure 56(c) requires that all controverted facts are to be liberally construed in favor of the nonmoving party. *G & M Farms v. Funk Irrigation Co.*, 119 Idaho 514, 517, 808, P.2d 851, 854 (1991); *Sanders v. Kuna Joint School Dist.*, 125 Idaho 872, 874, 876 P.2d 154, (Ct. App. 1994). Granting such a motion is proper only when there is no issue of material fact and the moving party is entitled to judgment as a matter of law. The Respondent, as the moving party, carries the burden to establish that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law. *Eliopulos v. Knox*, 123 Idaho 400, 404, 848 P.2d 984, 988 (Ct. App. 1992).

A dismissal without leave to amend is improper unless it is beyond doubt that the complaint “could not be saved by any amendment.” *Harris v. Amgen, Inc.*, 573 F.3d 728, 737 (9th Cir. 2009.) Furthermore, a pro se complaint is “to be liberally construed” and “however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.” *See Erikson v. Pardus*, 551 U.S. 89, 94 (2007) (quoting *Estelle v. Gamble*, 429 U.S. 97, 106 (1976) and citing the Fed. R. Civ. P. 8(f)’s, now 8(e)’s mandate to construe pleadings so as to do justice.) After *Twombly* and *Iqbal*, a court’s “obligation remains, ‘where the petitioner is pro se, particularly in civil rights cases, to construe the pleadings liberally and to afford the petitioner the benefit of any doubt.’” *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010) (quoting *Bretz v. Kelman*, 773 F.2d 1026, 1027 n. 1 (9th Cir. 1985) (en banc)).

Ultimately, Petitioner as the party bringing the Request for the Due Process Hearing bears the burden of proof to prevail in this matter. *Schaffer v. Weast*, 546 U.S. 49, 126 S.Ct. 528, 163 L.Ed.2d 387 (2005).

DISCUSSION

I. Availability of Remedies under the IDEA

Petitioner is pro se. The Due Process Hearing request reflects a request for the remedy of holding an IEP meeting with a 3rd party “expert” who meets the Student, “understands the situation, and can observe the meeting.” Petitioner requested “consideration to be take [REDACTED]

[REDACTED]” Petitioner requested a google document to share information, as well as specific goals and accommodations.

For the reasons set forth below, the remedies are either unavailable through a Due Process Hearing under the IDEA, and Petitioner is not entitled to this form of relief, or the request for relief is moot because the Respondent has already complied with the request, and any further relief is premature.

As it pertains to providing a remedy to an aggrieved party, the IDEA allows courts to grant “such relief as the court determines is appropriate,” 20 U.S.C. § 1415(i)(2)(B)(iii).

In this matter, there is no appropriate or remaining remedy to be granted to Petitioner, as the requested relief is moot. The Respondent agreed to evaluate the Student to determine whether the Student would qualify for special education under the IDEA, and Petitioner signed the necessary consent for assessment. The process to determine eligibility is underway, and therefore, the requested remedy has already been bestowed. Based on the IDEA’s timeline, the District has until February 21, 2024, to complete the eligibility process. Nothing precludes Petitioner as the Student’s parent to participate in that eligibility determination, and it is indeed the parent’s right as a member of the IEP team to participate. As Respondent’s motion explains, mootness is a jurisdictional issue; when the matter become moot, a court is deprived of jurisdiction to consider claims in which the court cannot grant effectual relief. *DBSI/TRI IV Ltd. P’ship v. United States*, 465 F.3d 1031, 1038 (9th Cir. 2006). Here, Respondent’s agreement to evaluate the Student for eligibility and rendered this matter moot.

Regarding further relief sought identified in the hearing request, including whether the Student qualifies for special education under the IDEA, this determination is an IEP team decision, and requires the completion of necessary evaluations and an IEP team discussion and decision. Anything beyond the completion of the evaluation process up until the moment the IEP team comes together to make that determination falls outside the scope of this hearing. Discussions regarding the contents of an IEP, such as goals and accommodations are premature, as the contents of an IEP would be contingent on a Student’s initial eligibility. Furthermore, this Hearing Officer does not have the authority to order a “3rd party” to attend a future IEP team meeting. Petitioner is welcome to invite such a person, but such a remedy is unavailable through this administrative process. Finally, ordering specific goals or accommodations falls outside of this Hearing Officer’s expertise, as the experts regarding those matters are educators, parents, treatment professionals – the members of the IEP team, not administrative officers; ordering a specific goal is not an appropriate remedy under 20 U.S.C. § 1415(i)(2)(B)(iii).

II. Propriety of Motion to Dismiss without Leave to Amend

In light of Petitioner pro se status, a brief explanation is merited as to why a Motion to Dismiss without leave to amend is proper. As previously mentioned, a dismissal without leave to amend is improper unless it is beyond doubt that the complaint “could not be saved by any amendment.” *Harris v. Amgen, Inc.*, 573 F.3d 728, 737 (9th Cir. 2009.) In these proceedings, it is beyond doubt that no further amendment could save the complaint. The matter is moot because the District is evaluating the Student, but cannot predetermine whether or not the Student would qualify for special education under IDEA. Any discussions regarding goals and accommodations is premature, as an eligibility determination would be a condition of qualification. Any accommodations pursuant to an IEP would depend on whether the Student qualified for special education, and any accommodations through a 504 plan falls outside the scope of this proceeding. Therefore, a dismissal with prejudice is appropriate.

CONCLUSION and ORDER

Respondent's Motion to Dismiss is hereby GRANTED with prejudice. Any and all future hearing dates are vacated.

Dated this 18th day of January, 2024.

/Courtney Sidonia Wucetich/

Courtney Sidonia Wucetich

Hearing Officer

[REDACTED]

Lyndon Nguyen

[REDACTED]

Abbigail French

[REDACTED]